



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/172462

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 04, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to Child Care (CC), a hearing was held on April 14, 2016, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly determined the Petitioner was overpaid child care benefits in the amount of \$2,200 for the period of November 1, 2015 to January 31, 2016.

NOTE: The record was held open until April 28, 2016 to give the Petitioner an opportunity to submit medical documentation supporting her leave of absence. The Petitioner submitted a letter from her employer (Exhibit 22) and a letter from her therapist (Exhibit 21)

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED], Child Care Specialist  
Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. The Petitioner was having mental health issues that necessitated her taking time off of work. She went on leave on November 18, 2015 and returned to work for the same employer on February 8, 2016. (Exhibits 4, 21 and 22)
3. On December 7, 2015, the Petitioner reported that she was on medical leave from work and provided verification from her employer. (Exhibits 4 and 7)
4. The agency continued to authorize, and the Petitioner continued to use, child care, though sporadically. (Exhibit 6)
5. Petitioner continued to use the same child care provider upon her return to work. (Testimony of Petitioner)
6. On January 21, 2016, the agency sent the Petitioner a manual Child Care Client Overpayment Notice, claim # [REDACTED], alleging an overpayment of \$2,200 for the period of November 11, 2015 through January 16, 2016. (Exhibit 5)
7. On January 22, 2016, the agency sent the Petitioner an automated Child Care Overpayment Notice, claim # [REDACTED], indicating she was overpaid child care benefits in the amount of \$2,200 for the period of November 1, 2015 through January 31, 2016. (Exhibit 9)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 3, 2016. (Exhibit 1)

### DISCUSSION

Regardless of who caused the overpayment, the county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than is entitled to receive. "All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client." *Child Care Manual – former §2.1.5.2 and §2.1.4.2; See also current §3.5.1.*

Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also *Wisconsin Shares Child Care Assistance Manual (Child Care Manual)*, §2.1.5.1, which can be viewed on line at <http://www.dhs.wisconsin.gov/em/index.htm>.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving recoupment of an alleged overpayment, the agency is the moving party, seeking to change the status quo. As such, the agency bears the burden to prove that it acted correctly.

A parent/caregiver is eligible for child care services if he/she needs child care to participate in an "approved activity", such as working a job. *Child Care Manual*, former §§ 1.5.0, et al., & 1.4.8 ; current §1.4.8.

It is the agency's contention that the Petitioner was overpaid childcare benefits for the time she was on medical leave, because she was not in an approved activity.

However, Wis. Admin. Code §DCF 201.04(2g)(h) states:

The child care administrative agency may authorize payment to a licensed or certified provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for **no more than 6 weeks** if the absence is due to a

medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons. The department and child care administrative agency may not consider payment for a temporary absence to be an overpayment if the parent intended to return to work but does not actually return.

In other words, a child care administrative agency may authorize payment for child care during a temporary break in employment due to medical reasons when:

- 1) The parent intends to return to work,
- 2) The parent intends to continue to use the childcare provider upon return to work,
- 3) The parent actually returns to work,
- AND
- 4) The medical leave is documented by a physician.

In the case at hand,

- 1) Petitioner intended to return to work and did return to work for the same employer.
- 2) Petitioner continued to use the childcare provider upon return to work.
- 3) The Petitioner actually returned to work.
- 4) She provided medical documentation from her therapist for her leave.

Thus, she was eligible for child care benefits for at least part of her break from employment. Petitioner's medical leave began November 18, 2016. Per Wis. Admin. Code §DCF 201.04(2g)(h) the agency may only pay for six weeks of childcare when someone is on medical leave. The sixth week from November 18, 2016, ended on December 29, 2016. As such, no overpayment of benefits occurred before December 29, 2016.

Exhibit 6, the Case Utilization Listing, indicates the Petitioner did not use child care the week beginning December 27, 2016. Thus, per Exhibit 6, the overpayment occurred during the weeks beginning January 3, 2016 and January 10, 2016.

In addition, the cause of the overpayment was agency error, because it continued to authorize payment for January 2016, even after the Petitioner reported her medical leave on December 7, 2015.

It should be noted, that I cannot determine whether the dollar amount of the overpayment was correct, because the agency did not provide documentation showing what amount of money was actually paid to Petitioner's child care provider during the time in question. As such, the agency will have to issue a new overpayment notice reflecting the correct dollar amount of the overpayment. If the Petitioner disagrees with the overpayment amount, she can file a NEW appeal, limited to the issue of the amount of the overpayment.

It should also be noted that this decision has attempted to follow the holding in the decision issued by DCF Assistant Deputy Secretary Buschman in case CCO/153372.

### **CONCLUSIONS OF LAW**

The agency did not correctly determine the Petitioner was overpaid child care benefits in the amount of \$2,200 for the period of November 1, 2015 through January 31, 2016.

**]THEREFORE, it is**

**ORDERED**

That the agency:

- 1) Rescind overpayment claim # [REDACTED];
- 2) Review the payments made to Petitioner's child care provider.
- 3) Issue to the Petitioner a new notice, reflecting an overpayment for the period of January 3, 2016 through January 16, 2016, only, and reflecting that the overpayment was caused by agency error.

The agency shall take all administrative steps to complete this task within ten days of this decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

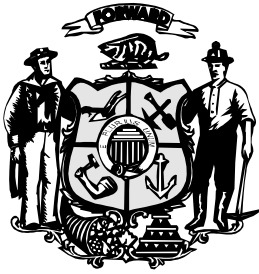
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of June, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 17, 2016.

Outagamie County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud